

Another Step towards Attaining Malta's Digital Economy:

Reduced Tax Rate for “Qualifying Expatriates” operating in the Development of Digital Products in Malta

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As part of Malta's Digital Gaming Strategy, as from 1st January 2012 and through Legal Notice 106 of 2013, Malta has issued another incentive for expatriates working on the island. This new incentive covers employees working in development of innovative and creative digital products. Through this incentive, the latter may choose to have their employment income in respect of work exercised in Malta to be chargeable at a flat rate of 15% tax in lieu of progressive rates of tax which can be as high as 35%..

1. Malta's Digital Gaming Strategy

On 27th April 2012, almost a year ago, Malta Enterprise, the University of Malta and the Malta Council for Science and Technology in collaboration with the Ministry of Finance, the Economy and Investment launched the Digital Gaming Strategy for Malta to facilitate the growth of this lucrative niche as an offshoot of the flourishing ICT industry.

Malta has identified growth potential in the digital gaming arena particularly in view of the strong ICT industry on the island and the possibility of transferring skills and technology not only from other existing sectors such as software development or iGaming, but also from other industries such as film and audiovisual.

2. Qualifying Criteria

Under this new scheme that covers employees working in the development of innovative and creative products industry, for such employee to benefit, he/she must:

- (a) hold a qualifying contract of employment
- (b) hold an eligible office
- (c) submit an application to Malta Enterprise (ME) for its approval

(d) hold a qualifying contract of employment under which contract one's employment income is of a minimum of Eur45,000 per annum exclusive of any fringe benefits.

Very important to note that prior approval in writing is required by ME, which must be satisfied that the employer or a person related to the employer has not benefitted from any business incentive laws and/or any arrangement in terms of the business incentive laws.

3. Eligible Office

With reference to what constitutes “an eligible office” one would need to roles which are directly engaged in the development of innovative and creative digital products. These are as follows:

- Chief Executive Officer,
- Chief Technical Officer,
- Chief Creative Officer,
- Head of Writing,
- Lead-in-World Writer,
- Lead Game Programmer,
- Software Engineering Director,
- Game Developer,
- Director of Online Community,
- Head of Art Design and Visualisation,

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- Art Director, Digital Artist,
- Commercial Director (Digital Licensing),
- Head of Game Design,
- Game Director,
- Game Designer,
- Audio Director,
- Video Director,
- Producer and
- Head of Marketing.

4. Beneficiary

There are a number of conditions under the scheme that must be met. Basically a beneficiary must:

- derive employment income in respect of work or duties carried out in Malta, or in respect of any period spent outside Malta in connection with such work or duties, or on leave during the carrying out of such work or duties;
- be in possession of the requisite qualifications and experience to be able to hold the eligible office;
- be protected as an employee under Maltese law for the purpose of exercising genuine and effective work for or under the direction of someone else and has the requisite adequate and specific competence as approved by ME;
- prove to the satisfaction of ME that he performs the activities of an eligible office;
- declare for Maltese income tax purposes all his income received under the qualifying contract of employment and all income received from a person related to his employer;
- prove to the satisfaction of ME that he is in receipt of stable and regular resources which are sufficient to maintain himself and his family.
- have a sickness insurance policy in place which covers him and his family in respects of all risks while in Malta;

- reside in a suitable accommodation;
- not domiciled in Malta;
- be in possession of a valid travel document.

5. Malta Tax Treatment

If all the above conditions are met, income derived from a qualifying contract of employment will be deemed to be the individual's first part of his income and will be subject to a flat rate of tax of 15% without the possibility to claim any deductions, relief, set-offs or credits, whether under a relevant double tax treaty or otherwise. Any income from a qualifying contract of employment which exceeds Eur5,000,000 will not be subject to tax in Malta.

The scheme applies for a consecutive period of up to three years for EEA, Swiss and third country nationals. The three consecutive years will commence from the year in which the person was first liable to tax in Malta. If the first year of assessment in which the individual was first liable to tax in Malta was prior to year of assessment 2013, the option will be available for year of assessment 2013 and for the four subsequent years of assessment starting from the first year of assessment. As soon as the eligible period (three years) expires, the employment income would then be chargeable to tax at normal rates of tax applicable to individuals.

Any rights acquired by third country nationals under these rules, will be deemed to have been withdrawn if he stays in Malta for more than 1460 days in the aggregate or directly or indirectly acquired immovable property situated in Malta. Individuals cannot benefit from this scheme if they have already benefitted from a reduced rate of tax under any other rules and regulations applicable in Malta. The option may not be exercised in respect of any year of assessment preceding year of assessment 2013 and unless the option has been approved by ME.

6. Conclusion

This is another very important step towards attaining Malta's aim to become a digital society *par excellence*. This step clearly shows that the administration is pushing Malta to become a centre of excellence and competitiveness in this avante garde area, it will enable foreign human capital to choose Malta as their digital hub and will in turn, enhance local expertise and know-how which are pivotal in the development of the island as an excellent location for the development of digital minds.

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